

REMARKS

The present application relates to hybrid maize plant and seed 33T17. Claims 5-42 are canceled. Claims 9-19, 22-32 and 35-40 were previously canceled in the Amendment After Final submitted on May 13, 2003. Claims 43-71 have been added. Applicant respectfully requests consideration in view of the following remarks.

Detailed Action

A. Status of the Application

Applicant acknowledges the finality of the Office Action mailed March 5, 2003 is withdrawn.

B. Claim Objections

Applicant acknowledges the objection of claim 5 as the Examiner states it is unclear as to where the tissue culture of regenerable cells is produced from. Applicant has canceled claim 5, thus rendering this objection moot.

C. Newly Submitted Claims

Applicant acknowledge the addition of new claims 43 through 71, as specifically stated by the claims faxed by Examiner David Fox on November 15, 2002 and the new sample claim submitted by Supervisory Patent Examiner Amy Nelson via e-mail on August 7, 2003 and August 25, 2003 and September 2, 2003 and per the meeting of supervisory and primary Examiners on September 11, 2003. The new claims do not add new matter as there is support for the claims in the originally filed specification. Support for the specific items noted in the claims faxed by Examiner Fox can be found within the specification for *Bacillus thuringiensis* on page 33; for imidazolinone, sulfonylurea, glyphosate, glufosinate, L-phosphinothricin, triazine, and benzonitrile on pages 35-36; for phytase on page 36; for stearyl-ACP desaturase, fructosyltransferase, levansucrase, alpha-amylase, invertase and starch branching enzyme on pages 36-37; and increased amylose starch on page 37.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 6, 7, 8, 21, 33, 34, 41, and 42 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 6 stands rejected as indefinite for the phrase "the cells or protoplasts of said cells" due to improper antecedent basis.

Applicant has now canceled claim 6, thus alleviating this rejection.

The Examiner rejects claim 7 for the recitation "capable of expressing" rendering the claim indefinite.

Applicant has canceled claim 7, thereby alleviating this rejection.

Claims 8 and 21 stand rejected as indefinite because the maize plant of claim 2 or 20, respectively, is not male sterile, hence claims 8 and 21 are improperly dependent on claims 2 and 20 respectively. The Examiner also states it is unclear what is encompassed by "genetic factor" and "further comprises".

Applicant has canceled claims 8 and 21, alleviating this rejection.

The Examiner rejects claim 33 as indefinite for the recitation "developing from the cross a hybrid maize plant" as it is unclear what is encompassed by "developing".

Although not acceding to the Examiner's rejection, in order to expedite prosecution Applicant has canceled claim 33, thus alleviating this rejection.

Claim 34 stands rejected as indefinite because the method steps "obtaining" and "applying" do not state positive method steps. The Examiner further states the term "essentially" renders the claim indefinite.

Applicant has now canceled claim 34, thereby alleviating this rejection.

The Examiner rejects claim 41 as indefinite for the phrase "genetic factor" as it is unclear what the metes and bounds of this limitation are.

Applicant has canceled claim 41, alleviating this rejection.

In light of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 8, 21, 41, and 42 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Although not acceding to the Examiner's rejection, to expedite prosecution Applicant has canceled claims 8, 21, 41, and 42, thereby rendering this rejection moot. Applicant has added new claims 43-71 as specifically stated by the claims faxed by Examiner David Fox on November 15, 2002 and the new sample claim submitted by Supervisory Patent Examiner Amy Nelson via e-mail on August 7, 2003 and revised via telephone on August 25, 2003 and September 2, 2003 and per the meeting of supervisory and primary Examiners on September 11, 2003. The new claims do not add new matter as there is support for the claims in the originally filed specification as described *supra*.

Claims 8, 21, 41, and 42 stand rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains or with which it is most nearly connected, to make and/or use the invention.

Applicant respectfully traverses this rejection. Applicant has provided assurance that at least 2500 seeds of hybrid maize plant 33T17 and the inbred parents GE515488 and GE534625 have been deposited with the ATCC. In view of this assurance, the rejection under 35 U.S.C. § 112, first paragraph, should be removed. (MPEP § 2411.02). Although not acceding to the Examiner's rejection, to expedite prosecution the Applicant has canceled claims 8, 21, 41, and 42, thereby rendering this rejection moot. Applicant has added new claims 43-71, as disclosed *supra*. It is respectfully submitted that Applicant's claims are sufficiently described and enabled by the specification.

Summary

Applicant acknowledges that claims 1-4, 20, and 33 are allowed.

Applicant has amended the claims as suggested by Examiner David Fox and Supervisory Patent Examiner Amy Nelson as allowable. Applicant submits the claims

place the application in condition for allowance and comply with all requirements of form set forth in previous office actions.

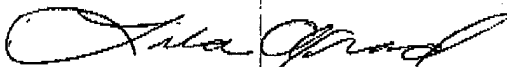
Conclusion

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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